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Paper No. 6

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DEC 04 2001

OFFICE OF PETITIONS

In re Reissue Application of
Markham
Reissue Application No. 09/589,788
Filed: June 6, 2000
Original Patent No. 5,865,146
Patent Issue Date: February 2, 1999

DECISION
GRANTING PETITION

This is a decision on the petition under 37 CFR 1.53(e), filed July 20, 2001 and resubmitted by facsimile transmission October 23, 2001, to accord the above-identified reissue application a filing date of June 6, 2000.

The petition is **GRANTED**.

In support of the petitions, submitted in reply to the "Notice of Incomplete Reissue Application"- mailed May 24, 2001 and again on August 23, 2001, which indicated that no filing date had been granted in that a specification and at least one claim were missing, petitioner includes a copy of a postcard receipt itemized with respect to the instant application papers and bearing the USPTO date stamp of June 6, 2000.

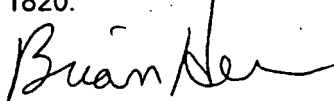
Inspection of the instant application file, which is the official record of what the USPTO has received, fails to reveal the presence of a copy of U.S. Patent No. 5,865,146. However, the itemized postcard receipt bearing a USPTO date stamp of June 6, 2000, is accepted as *prima facie* establishing that a copy of U.S. Patent No. 5,865,146 was among the instant application papers received at the USPTO on June 6, 2000. Under 37 CFR 1.173 in effect at the time the application papers were received at the USPTO, such was an acceptable specification and claim(s) for purposes of obtaining a filing date. The aforementioned Notices of May 24, 2001 and August 23, 2001, were mailed in error and are **vacated**. The error is regretted.

Since the quality of the patent photocopy submitted with the petition (part of Exhibit C) is poor, and moreover, is part of the evidence submitted with the petition *per se*, the undersigned has obtained a photocopy of the patent from the USPTO database, which will be used for further processing in the USPTO, and which is also acceptable under current 37 CFR 1.173(a)(1), effective November 7, 2000.

As requested, the petition fee has been credited to deposit account No. 19-1970.

The application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of June 6, 2000, using the USPTO supplied copy of Patent No. 5, 865, 146, as the specification, drawings, and that 13 claims were present on filing, claims 1 through 10 being in the copy of the patent, and claims 11 through 13 added by way of the preliminary amendment of June 6, 2000.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-1820.

A handwritten signature in cursive script, appearing to read "Brian Hearn".

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy